A.F.R. (16)

High Court of Chhattisgarh, Bilaspur
S.B. Hon'ble Shri Vijay Kumar Shrivastava, J
Misc. Appeal No. 886/2005

Appellant Claimant	Gopi Ram, S/o Manglu Ram Kewat, Age 35 Years, R/o Village Hirapur, Tahsil Balod, District – Durg (C.G.)

Versus

Respondent Non-claimant	Hiralal S/o Baldeo Sahu, Age 40 Years, R/o Village Hirapur, Tahsil Balod, District – Durg (C.G.)

Present :
Shri S.K. Guha, counsel for the appellant
None for the respondent

ORDER

(Dated 23rd February, 2006)

This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short the 'Act') is directed against the award dated 31/3/2005 passed by the Additional Motor Accident Claims Tribunal, Balod, in Claim Case No. 35/2004.

2. On 22.3.2005, the appellant while working as labour, was sitting in the Tractor-Trolley bearing registration No. CG 04 ZC 8488 and CG 04 ZC 8489. The said Tractor-Trolley was driven by respondent met with an accident due to h is rash and negligent driving. Appellant received injuries who assessed compensation

at Rs.69,000/- (Rupees Sixty Nine Thousand Only) and for recovery of the same, filed a petition under Section 166 of the Act.

3. Respondent has admitted that he is owner of the Tractor-Trolley bearing registration No. CG 04 ZC 8488 and CG 04 ZC 8489. The Tractor-Trolley was being used by him for transportation of Bolder, Murum etc. However, respondent denied the claim of the appellant and pleaded that he has already borne the Medical expenses incurred by appellant towards his treatment.

4. Appellant in support of his plea adduced oral and documentary evidence whereas respondent did not adduce any evidence. Learned Tribunal after appreciating the evidence, held that appellant has failed to prove that respondent was driving the vehicle at the time of accident, therefore, dismissed the petition.

5. Although oral evidence of Gopi Ram (PW/1) is contradictory. In examination-in-chief he has deposed that respondent Heeralal was driving the vehicle, but in cross-examination, he has stated that at the time of accident, the vehicle was not driven by him. Heeralal did not enter into witness box to deny that he was not driving the vehicle at the time of accident or to establish that the accident did not occur as a result of rash or negligent driving. Ex. P-5 is the summary sheet. Respondent pleaded his guilt in criminal trial wherein he has admitted that he was driving the tractor-trolley with rash and negligent manner and as a result of that accident took place and Gopi Ram was injured. Although oral evidence adduced by appellant was contradictory but from admission recorded by Criminal Court,

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lack of evidence to support that the accident was not a result of rash or negligent driving that apart admission of respondent that he spent the medical expenses, safely it can be established that the accident took place as a result of respondent's rash and negligent driving.

6. The vehicle met with accident is owned by respondent and the accident took place as a result of rash and negligent driving, therefore, who was driving the vehicle was not very much material because owner of the vehicle cannot absolve from his liability to pay compensation if it is proved that the claimant is entitled for compensation as a result of that accident.

7. From the statement of Gopi Ram (PW/1), Kamta Prasad (PW/2), Smt. Chandrika Bai (PW/3) and Harichand (PW/4) and Medical examination report Ex. P-9, it is proved that appellant Gopi Ram received injuries in the accident and he was medically treated for his injuries. For treatment, he was also admitted in the hospital. In order to support the nature of injuries, nothing has been brought on record, however, appellant as a result of injury had incurred expenditure towards medical treatment. Appellant in his statement accepts that around Rs.8,000/- to Rs. 9,000/- was spent by respondent towards his medical expenses. Ex. P-2, is memo in support of purchase of medicine costing Rs. Rs.1860/- for the treatment of Gopi Ram. There is no proof that this amount has also been paid by the respondent. Injuries sustained by the appellant were not severe or permanent, the substantial expenditure had already been borne by the respondent. The period

of admission in the hospital is about 4 to 5 days, therefore, considering all these facts if total sum of Rs.5,000/- including medical expenses incurred by the appellant vide Ex.P-2 is allowed to the appellant that will be just and proper compensation in the instant case.

8. In the result, the appeal is partly allowed. Respondent shall pay to the appellant Rs.5,000/- (Rupees Five Thousand Only) with interest @ 9% from 3.7.2004, till realization and Rs.2000/- towards cost of the Tribunal as well as Appellate Court.

Sd/-
V.K.Shrivastava
Judge

rao